COMPLIANCE BOARD OPINION NO. 99-17

October 7, 1999

Nathan H. Christopher, Jr., Esquire

The Open Meetings Compliance Board has considered your request of August 30, 1999, that the Compliance Board reconsider Compliance Board Opinion No. 99-13 (August 26, 1999), concerning alleged violations of the Open Meeting Act by the Salisbury City Council on June 14, 1999. The Act contains no provision for the reconsideration of a previously issued Compliance Board opinion. The Board has decided, however, to treat your August 30 letter as an amended version of your original complaint and to consider the points raised in that letter in this new opinion, which supplements Opinion No. 99-13.

I

Closed Session Procedures

Your August 30 letter asserted that the notice of the closed meeting held on June 14 should be deemed inadequate, because the notice was posted in the lobby of the County Government Building on Friday, June 11, and was not open to public view during the weekend when the building was closed. In addition, you pointed out that the closed meeting was not advertised, although the regular open meeting was. In a letter dated September 8, 1999, W. Newton Jackson, III, Esquire, writing on behalf of the City Council, pointed out that the notice on the lobby bulletin board was open to view during regular business hours on Friday, June 11 and Monday, June 14.

The Open Meetings Act does not require either a particular period of advance notice or a particular method of notice. There must be "reasonable advance notice," §10-506(a) of the State Government Article, and the method can be "any ... reasonable method," §10-506(c)(4).

The amount of advance notice is to be related to the time between the scheduling of a meeting and its occurrence – that is, the more lead time the public body allows itself, the more notice it should give to the public. As the Attorney General put it, "the rule of thumb,

given the policies of the Act, is that notice of a future meeting should be given as soon as is practicable after the body has fixed the date, time, and place of its next meeting." Office of the Attorney General, *Open Meetings Act Manual* 12 (3rd ed. 1997).

The Compliance Board does not know when the Salisbury City Council decided that it needed to hold a closed meeting on June 14. If the meeting was scheduled on short notice, a posting of the notice on June 11 was legally sufficient. If the Council knew many days in advance that it was going to hold the closed session, it should have provided a greater period of notice. Without the requisite information, the Compliance Board can offer no opinion on the reasonableness of the notice's timing.

As to the method of notice, the Open Meetings Act allows, but does not require, notice to be given through advertising. That the City Council advertised its open session does not imply that it was obliged to advertise its closed session. If the public is aware of the practice, notice through posting in a single location, like a government office's bulletin board, complies with the Act. *See* Compliance Board Opinions 92-3 (November 9, 1992) *reprinted in* 1 *Official Opinions of the Maryland Open Meetings Compliance Board* 10, and 93-4 ((February 24, 1993) *reprinted in* 1 *Official Opinions of the Maryland Open Meetings Compliance Board* 30. Moreover, use of a bulletin board for meeting notices does not become unreasonable merely because the bulletin board is available only during regular business hours. The Act requires reasonable public access to meeting notices, not necessarily around-the-clock access.

II

Openess Requirement

In Opinion No. 99-13, we pointed out that "the procedures for closing a session must themselves be conducted in open session.... Therefore, had members of the public sought admission to the small conference room in which the Council was holding its closed session in order to observe the vote to close, they would have been entitled to do so."

In your letter of August 30, you objected "that at the time this meeting was taking place, the County Office Building was, in fact, locked up and no 'member of the public' could have gotten into the building to observe the vote." For his part, Mr. Jackson denied that the public was barred: "Despite Mr. Christopher's assertions, the building was not locked while the closed session took place. The security guard customarily opens the building at 6:00 p.m. whenever there is any type of City or County meeting the same evening."

The Compliance Board cannot resolve conflicting assertions about the facts and, therefore, cannot offer an opinion on this point. If the building was locked, then the Act was violated. If was not locked, and members of the public were able to observe the vote to close, then the Act was complied with.

III

Gathering of Quorum at Restaurant

This issue, too, involves differing versions of the facts. In your letter, you cited a newspaper story in support of the assertion that the councilmembers present in the Market Street Bar "did discuss city business while they were drinking that night and that further they did it 'all the time.'" Mr. Jackson on the other hand, suggested that the story was inaccurate and reiterated one councilmember's denial that City business was discussed that evening.

As the Compliance Board's prior opinion made clear, had the councilmembers discussed public business within the scope of the Act, they would have been holding a "meeting" improperly. However, based on the City's unqualified assertion to the Compliance Board that no public business was discussed, the gathering was not a meeting and was not subject to the Act.

OPEN MEETINGS COMPLIANCE BOARD

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